SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT

KEY DECISIONS OF THE APPELLATE COURT

Presented to the Meskwaki Tribal Court Interim Study Committee
September 29, 2006

COURT OF APPEALS OF THE
SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA
TRIBAL COURT
(Meskwaki Settlement)

In Re the Matter of the Per Capita
Payments Of Archie R. Bear

Case No. Bear-App-CV-2006-01-010

Upon the Petition of

Archie R. Bear,

Petitioner.

ORDER

Mr. Bear brought this action seeking to have the tribe redirect his per capita payments. Mr. Bear is currently incarcerated and the Tribe sends his per capita payment to the state prison, where the money is processed and put aside for Mr. Bear. Mr. Bear alleges that a number of different problems result from this process.

As an alternative solution, Mr. Bear approached the Tribe about sending his per capita check to either his mother or his sister, rather than to the prison. The Tribe, although not completely unsympathetic, explained that its interpretation of the Tribe's per capita ordinance would not allow the Tribe to send a per capita check to anyone other than the actual recipient of the check.

Mr. Bear brought this action in an effort to obtain a court order directing the Tribe to send his per capita check to a relative living on the reservation, rather than to the authorities at the state prison. Mr. Bear is proceeding pro se.

The Tribe filed a motion requesting that this action be dismissed on the basis of tribal sovereign immunity. The trial court denied that motion, and the Tribe has appealed.

As an initial matter, the parties dispute whether this Court has jurisdiction over an appeal from a denial of a motion to dismiss. Normally, such orders are not appealable final

Appeal Denying Tribes Motion to Dismiss

orders. Prescott v. Little Six, Inc., 387 F.3d 753 (8th Cir. 2004). However, the Tribe argues that the trial court's order is a final order that may be appealed.[1]

Mr. Bear responds that the Tribe's attempt to appeal should be dismissed. He notes that a denial of a motion based on sovereign immunity more appropriately falls under the Code section addressing discretionary appeals to this Court, and that the Tribe has failed to properly perfect a request for a discretionary appeal.

Section 5-4401 of the Code specifies which judgments and orders of the trial court may be appealed. Section 5-4401(a) (1) states that a appeal of right exists from any "final judgment". In addition, Section 5-4401(b) (1) states that a party may request that this Court hear an appeal under certain circumstances not involving a final judgment. However, if a party is requesting a discretionary appeal of a non-final judgment under 5-4401(b) (1), that party must file a petition to appeal within 30 days of the order being issued under 5-4402(c). The Tribe filed this action as an appeal from a final judgment under 5-4401(a), and did not file a petition to appeal as a discretionary appeal under 5-4401(b).

The question, then, is whether the trial court's order denying a defense of sovereign immunity is a "final judgment" or not, as that term is used under Section 5-4401(a) (1).

We begin by noting that Section 5-4401 uses the term "final judgment", rather than the more inclusive "final order". We assume that the choice of the term "final judgment" was intentional when drafted, and designed to draw a distinction with the term "final order". A "judgment" must be "definite and certain," and it "must fix clearly the rights and liabilities of the respective parties to the cause." Corpus Juris Secondum, Judgments, § 82. Under this definition, the order by the trial court denying the Tribe's motion was neither final nor a judgment, because it did not clearly fix the rights and liabilities of the parties in a definite and certain manner. Instead, the trial court's order simply denied a non-final motion, and the case may now proceed to trial. The trial court's order therefore, may not be appealed under Section 5-4401(a) (1).

We are sympathetic to the Tribe's argument that orders denying a sovereign immunity defense should be appealable as a matter of policy. But Section 5-4401 specifically lists the circumstances under which an appeal can be taken, and neither a denial of sovereign immunity, nor the application of the collateral order doctrine, are specified within the terms of the relevant Code sections.

Mr. Bear is correct that in this case the Tribe should have considered this a discretionary appeal and filed a petition under Section 5-4401(b) (1). The Tribe did not do so within

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[1] To support this point, the Tribe cites a number of cases that discuss the collateral order doctrine. The collateral order doctrine states that while a non-final order is not normally appealable, it may be appealed in certain limited circumstances. Although the cases cited by the Tribe discuss the collateral order doctrine, the Tribe's brief does not raise the application of the collateral order doctrine as a ground for supporting its appeal. Therefore, we do not consider the application of that doctrine to this case, and instead, we confine our consideration to the Tribe's argument that the order below was a final order under Section 5-4401(a) of the Code.

the timeframe specified, and since their appeal was not properly perfected, this Court lacks jurisdiction to consider the appeal on the merits. See, e.g., Dieser v. Continental Cas. Co., 440 F.3d 920, 923 (8th Cir. 2006) ("The requirement of a timely notice of appeal is mandatory and jurisdictional.")

It is Hereby ORDERED:

That this matter is remanded to the trial court for a determination on the merits.

For the Court Unanimously,

Dated: 8/23/06

Henry M. Buffalo, Jr.
Chief Justice

c: A Bear
J Rasmussen
8-28-06 TEM

APPELLATE COURT OF THE
SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA

In Re:
Calvin Johnson,

Case No.: Johnson-App-CV-2005-01-022

Appellant,

v.

Tribal Council Case No.: 2005-06

Sac & Fox Tribe of the Mississippi in Iowa Hearing Examiner,

Respondent.

MEMORANDUM AND ORDER

I. Background

This appeal comes to this Court from a decision made by the Tribal Council. The basic posture of this case is that the Tribal Council believed that Mr. Johnson possessed tribal property that he had failed to return after leaving office. After notice, the Tribal Council held a hearing to determine if Mr. Johnson had returned all of his tribal property. Mr. Johnson participated in this hearing with the assistance of counsel, and he turned over to the Tribal Council hundreds of pages of documents, a tribal cell phone, and a tribal laptop computer. After the hearing, the Tribal Council concluded that Mr. Johnson had failed to demonstrate that he had returned all of his tribal property, and the Tribal Council imposed financial sanctions against Mr. Johnson. The fines levied against Mr. Johnson included $1,000 for attorney's fees and costs, and $1,000 a day until he "purges himself of his contempt of Council." See Order Imposing Sanctions, Order ¶1.

The Tribal Council may hold adjudicative hearings under the provisions of Title I, Article III, and Chapter 2 of the Code of the Sac & Fox Tribe of the Mississippi in Iowa (the Code). Specifically, Section 1-3202(a) states that the hearing procedures in Chapter 2 apply to:

> (a) Tribal Council hearings to determine whether a person who is, was, or claims to have been a former officer, agent, or other official of the Tribe has returned all Tribal governmental property.

Appeal of Tribal Council Decision

Section 1-3211(a) creates a presumption that such a person should have the governmental property in question, unless they can prove otherwise.

> (a) For hearings under Section 1-3202(a), a rebuttable presumption shall exist that an Examinee has possession and control of all property which a person in Examinee's claimed office should have possessed or controlled, and the Examinee shall have the burden of overcoming that presumption by a preponderance of the evidence.

The ability of this Court to review Tribal Council decisions under these provisions is limited by Article III, Title I, Chapter 2 of the Code. Specifically, Section 1-3213(a) states:

> The sole permissible inquiries during Tribal Appellate Court review shall be:
>
> (1) Did the Tribal Council provide due process of law to the Examinee [in this case Mr. Johnson]; and
>
> (2) Are the Tribal Council's conclusion of law arbitrary and capricious?

In addition, Section 1-3213(d) states that:

> If the Examinee was not accorded due process, or if the conclusions of law were arbitrary and capricious, the sole remedy shall be remand to the Tribal Council for reconsideration.

On appeal, Mr. Johnson argues that the financial sanctions imposed against him by the Tribal Council amount to a deprivation of his property without due process of law. Specifically, Mr. Johnson claims that:

> (1) the notice he received was inadequate for him to prepare for the far ranging questions he would face from the Tribal Council, and did not identify the specific tribal property the Tribal Council was seeking (see Examinee Calvin Johnson Sr.'s Request for Review at 6),
>
> (2) the Tribal Council's presumption that he possessed unspecified tribal property violated due process (see Examinee Calvin Johnson Sr.'s Request for Review at 6),
>
> (3) he was denied an impartial decision maker because the hearing process had inherently unfair conflicts of interest built into it by allowing the Tribal Council and its attorneys to act as prosecutor, judge, and jury (see Examinee' Calvin Johnson Sr.'s Request for Review at 7-8).

Mr. Johnson also argues that the Tribal Council's legal conclusion that he was in contempt, the amount of the fines against him, and the factual findings related to various issues were all arbitrary and capricious. [1]

II. Legal Discussion

A. Due Process

Due process is a fundamental principle honored in tribal and American courts across this country. At its most basic, due process means that a person cannot be deprived of their property or liberty without a fair process. There are numerous elements of due process that insure this procedural and substantive fairness. Depending on the circumstances, due process has been said to require clear and timely notice to the person in question of the claims against them, a hearing before some type of impartial decision maker, and the ability to reasonably controvert the evidence presented. See generally Concrete Pipe & Products of California v. Construction Laborers Pension Trust, 508 U.S. 602, 617 (1993)("due process requires a 'neutral and detached judge in the first instance") (citations and quotations omitted); Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985) ("An essential principle of due process is that a deprivation of life, liberty, or property be preceded by notice and opportunity for hearing appropriate to the nature of the case.")(citations and quotations omitted); Fuentes v. Shevin, 407 U.S. 67, 80 (1972) ("For more than a century the central meaning of procedural due process has been clear: Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner.")(Citations and quotations omitted); 16B Am. Jur. 2d Constitutional Law § 968; 16D Corpus Juris. Secondum § 1971.[2]

1. Notice

We agree with Mr. Johnson that, in this case, the notice was deficient.

The notices issued to Mr. Johnson in this case did not give him notice of the claims against him or the property the Tribal Council was seeking. Both the Petition filed before the Tribal Council and the Subpoena issued to Mr. Johnson include vague and open-

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[1] The Tribal Council claims that some of the arguments put forth by Mr. Johnson are raised for the first time on appeal to this Court, and therefore, should be disregarded. The Tribal Council is correct, that in other jurisdictions, a party must normally raise an issue in a lower court before pursuing it on appeal. 4 C.J.S. Appeal and Error § 202. However, even in other jurisdictions, this is not a hard and fast rule. Where, as here, a litigant raises issues that affect fundamental rights, constitutional questions, or matters of public policy, exceptions are often made to the rule. See, e.g., 4 C.J.S. Appeal and Error § 207, § 208. And here, even if some of Mr. Johnson's arguments were not raised below, the Court fails to see any prejudice to the Tribal Council from considering Mr. Johnson's legal arguments, since the Tribal Council had a full opportunity to respond in its Response Brief to any issue raised by Mr. Johnson.

[2] Our citation to cases and treatises in this opinion that deal with the law outside of this jurisdiction are included for the purpose of guidance and example, consistent with Section 1-2101 of the Code, and should not be construed as binding precedent upon this Court.

ended requests for documents related to a multitude of apparently unrelated subject matters. See Petition ¶¶ 11, 13, 14; Subpoena Duces Tecum ¶¶ 1-5. The Petition also makes the assertion that the property held by Mr. Johnson exceeds $788,000 in value, but the Petition completely fails to explain which pieces of tribal property in Mr. Johnson's possession are worth that much. See Petition ¶ 16. The Tribal Council later justified the amount of the sanctions in this case by claiming a right to sanction Mr. Johnson up to the amount of the missing property. See Order Imposing Sanctions, Conclusions of Law ¶ 7. Based on these notices, there was no way Mr. Johnson could have understood what specific property the Tribal Council was looking for, how that property could be worth $788,000, whether or not the Tribal Council was actually alleging that he stole $788,000 in tribal funds, or whether the $788,000 was in fact missing.

The presumption created by Section 1-3211(a) does not change this analysis. Section 1-3211(a) puts government officials in the difficult position of trying to prove a negative by requiring them to prove they no longer possess any property, including documents, that they possessed or controlled while in office. If the Tribal Council does not specify which pieces of property are missing, any examinee called before the Tribal Council must be able to prove that he or she no longer possesses any of the tribal property he or she ever possessed as a tribal official. It is difficult for the Court to imagine how an examinee could ever adequately prepare for such an open-ended inquiry into every document or piece of property the government official ever handled. Due process minimally requires a specific list of alleged missing property. Similarly, the Order Imposing Sanctions is also lacking because it does not clearly state precisely what property Mr. Johnson must return in order to purge himself of his contempt and to be free from the financial sanctions of $1,000 a day. The Order Imposing Sanctions simply states that there are documents related to the "apparent theft" of $779,000 that Mr. Johnson has failed to turn over. See Order Imposing Sanctions ¶ 2. Not only is this amount different than the $778,000 figure listed in Mr. Johnson's pre-hearing notice, but it does not specify which documents Mr. Johnson must produce to be free of the contempt finding. The Order Imposing Sanctions also states that there are "missing former Walker Council financial documents, including documents related to missing tribal funds . . ." that Mr. Johnson has not produced. See Order Imposing Sanctions ¶ 6. But again, there is nothing in this notice, nor in the record we have received that makes it clear what documents Mr. Johnson must return to be free of contempt. Finally, the Order Imposing Sanctions states that "there are documents which Examinee or other members of the former Walker Council provided to or received from Fred Dorr, Michael Mason, John Hearn, Dorsey & Whitney, Mark Fetter, the Concept Works, and Attorney's Process & Investigation . . ." that Mr. Johnson must produce. See Order Imposing Sanctions ¶ 7. But again, from this notice it is not clear what specific documents Mr. Johnson must produce to satisfy the Tribal Council and to be purged of contempt.

The presumption in Section 1-3211(a) does not remove the requirement imposed by due process. In order to comply with due process, if the Tribal Council wishes to impose financial sanctions against tribal members on the basis of contempt for violations of Section 1-3202, it must first give a detailed notice of the property it seeks and the specific allegations the Tribal Council is leveling. If the Tribal Council decides contempt

sanctions are warranted, it must then give tribal members specific notice of the steps that would remove the contempt citation.

In order to comply with due process on remand, the Tribal Council must give Mr. Johnson notice of the specific pieces of property it believes he possesses and has failed to return, and the value of those items, so that he may have a fair opportunity to answer the charges against him. In addition, if upon reconsideration the Tribal Council chooses to again impose financial sanctions on Mr. Johnson, it must give Mr. Johnson notice of the specific and concrete pieces of property he must return in order to be freed of his contempt citation.

2. Burden shifting

We also agree with Mr. Johnson that presumptions utilized by the Tribal Council violated due process. The starting point for the problem is Section 1-3211(a) which creates a rebuttable presumption that Mr. Johnson "has possession and control of all property which a person in Examinee's claimed office should have possessed or controlled." It is then up to Mr. Johnson to prove the negative – that he does not have property which he should have possessed or controlled.

Legislatures regularly create presumptions that do not offend due process. See, e.g., 16B Am. Jur. 2d Constitutional Law § 965. But in order to satisfy due process, a fact presumed has to be rationally tied to the fact proved in some way. Id. In this case, the fact that was proved, or at least not disputed, was that Mr. Johnson "is, was, or claims to have been a former officer, agent, or other official of the Tribe." See Title I, Article III, Section 1-3202(a).

But to jump from that fact, to the presumption that Mr. Johnson currently possesses or controls all property "which a person in Examinee's claimed office should have possessed or controlled," is not rational. See Title I, Article III, Section 1-3211(a).

First, the presumption in Section 1-3211(a) is not rational when applied to people, like Mr. Johnson, who are no longer in their government position. As currently drafted, the only way applying Section 1-3211(a) to former officials makes sense, is if it is assumed that once the person leaves office, he or she takes every piece of tribal property they ever controlled while serving in government. If this was, in fact, how people behaved, it would obviously cripple the ability of the Tribe to have any continuity in its governing councils. Once a person leaves the government position they claimed, it seems more rational to presume that they possess none of tribal property that was previously under their control.

Second, even if the presumption did apply to people who have left government service, the presumption would not be rational given the recent history of the Tribe. No matter how people characterize the disputes concerning the leadership of this Tribe over the past several years, it seems few people would claim that the transition from one council to another has been seamless. Mr. Johnson's testimony, in fact, demonstrates the sometime

chaotic nature of the recent leadership disputes. To assume, that despite this turbulence, a former government official has been able to obtain and currently possess all the property he or she did while in office, is not rational.

Third, while Mr. Johnson claims to have been a member of the former council, he does not claim that he was an officer of that council, a fact which the Tribal Council does not appear to dispute. It is therefore not rational to presume that he had possession and control of the wide breadth of documents cited in Tribal Council's Petition, in its Subpoena Duces Tecum, and in its Order Imposing Sanctions.

Therefore, the presumption and burden shifting stated in Section 1-3211(a) cannot be applied to Mr. Johnson, or other former officials, consistent with the requirements of due process. To satisfy due process, on remand, the Tribal Council must prove by a preponderance of the evidence that Mr. Johnson possesses the specific pieces property it is seeking, and the specific monetary values of that property.

3. Impartial decision maker

Mr. Johnson also complains that the hearings conducted by the Tribal Council failed to provide due process because they denied him an impartial decision maker. Specifically, Mr. Johnson claims that the attorneys for the Tribal Council acted as both prosecutor and judge, and that since those attorneys represent the Tribal Council in litigation in which Mr. Johnson is an opposing party, there is an appearance of bias, if not actual bias.

Evidence in the record supports Mr. Johnson's contention. In this case, the Tribal Council, commonly referred to as "The Bear" Council, has been at odds with the "Walker Council." Each claimed it was the legitimately elected council and each had charged the other with alleged misconduct in office. In fact, the"Walker Council" on June 18, 2003 passed a motion authorizing that a complaint be filed against Mr. Olson. The précise nature of the "complaint" referred to is unclear by the record but does suggest that the "Walker" council was at odds with the "Bear" council. Since Mr. Johnson was a council member when the June 18, 2003 resolution was passed, he is presumptively at odds with Mr. Olson.

Despite this apparent conflict, both Mr. Olson and Mr. Rasmussen were assigned as Hearing Examiners in Mr. Johnson's hearings and their impartiality is certainly questionable given the way in which the hearings were conducted. Both attorneys Olson and Rasmussen questioned Mr. Johnson in an adversary method. Neither ruled on, and sometimes simply ignored, objections presented by Mr. Johnson's attorney. See, e.g., Transcript, June 21, 2005 at 42, 48, 66; Transcript, June 27, 2005 at 137. Likewise, at one point during the hearings, Attorney Rasmussen interjected his personal opinion that particular decisions by the "Walker" council were flawed. See, e.g., Transcript, June 21, 2005 at 51-53 ("1.6 million dollars in my opinion was just a ridiculous settlement. Why did you approve it? Why did you approve that motion?"). While such questions and posturing may be appropriate (indeed even desirable) as adversary counsel to the present

Tribal Council, it was inappropriate in their capacity as Hearing Examiners and resulted in an appearance of partiality.

We do recognize that not all proceedings before the Tribal Council are inherently so biased as to constitute an abuse of process. Although Mr. Johnson claims that the present council includes political rivals of his who are predisposed against him, opposing political viewpoints are not enough, by themselves, to violate due process. See, e.g., National Center for Preservation Law v. Landrieu, 496 F. Supp. 716, 743-44 (D.S.C. 1980), aff'd 653 F.2d 324 (political pressure, absent any direct threats or other overt behavior, is not enough to negate the result of an administrative process.)

Here, it is clear from the Tribe's Constitution and Code that the Tribal Council has an adjudicative role to play in this community. Constitution and Bylaw of the Sac and Fox Tribe of the Mississippi in Iowa, Article X, Section 1(m); Sac & Fox Tr. of Miss. Code, Title I, Article III, Chapter 2. If political animus were enough to disqualify a Tribal Council member from deciding a particular matter, the Tribal Council could never function as an adjudicative body, because anyone called before it could simply claim they were the victims of political animosity.

The bias we find here is not in the Tribal Council's role of decision maker, but instead the bias that fails to comport with due process occurred in the conduct of the Hearing Examiners.

B. Arbitrary and Capricious

Mr. Johnson also argues that the Tribal Council's legal conclusion that he was in contempt, the amount of the fines against him, and the factual findings related to various issues were all arbitrary and capricious.

We agree with the Tribal Council that an evaluation of its factual findings under this standard is beyond the jurisdictional provisions of this Court. Section 1-3213(a) (2) states that the one of the only permissible inquiries by this Court shall be whether "the Tribal Council's conclusion of laws [are] arbitrary and capricious." For this reason, we decline to address Mr. Johnson's factual claims.

However, this Court does have jurisdiction to consider whether the legal conclusions of the Tribal Council were arbitrary and capricious. Merriam-Webster's Dictionary of Law (1996) defines "arbitrary" as "depending on individual discretion (as of a judge) and not fixed by standards, rules, or law", and "based on preference, bias, prejudice, or convenience rather than on reason or fact." The same source defines "capricious" as "lacking a rational basis" and "not supported by the weight of evidence or established rules of law." The role of this Court, then, is to determine whether or not the Tribal Council's legal conclusions are rationally based in reason, law or fact.

Mr. Johnson argues that the Tribal Council's legal conclusions that he was in contempt, and the amount of his fines, were in error. Since we have concluded that the process

upon which the contempt citation is premised lacked due process, the legal conclusion holding Mr. Johnson in contempt is in error as well. To hold otherwise would be to impose a sanction that lacked a rational basis in law, and would be arbitrary.

However, even if the contempt citation was premised upon a valid legal process, Mr. Johnson claims the amount of the fines imposed upon him were excessive. In its legal conclusions, the Tribal Council relies on four sources for its power to impose significant financial sanctions on Mr. Johnson, and to attach those funds from his per capita payments. Those four sources are: (1) the Tribe's Constitution, (2) Section 1-3202 of the Code, (3) the Tribe's revenue allocation plan, and (4) tribal common law.

Section 1-3202 of the Code and the Tribe's revenue allocation plan do not make any mention whatsoever about the Tribal Council's power to hold members in contempt, nor to impose financial sanctions. While the common law that guides this Court is composed of the Tribe's customs and traditions, see Sac & Fox Tr. of Miss. Code § 1-2101(a), the Tribal Council has not provided any explanation of how the huge fines levied in this case are consistent with tribal customs or traditions. To the extent that the Tribal Council's conclusions of law rely on these legal sources, we conclude such reliance is arbitrary and in error.

However, we agree with the Tribal Council that Article X, Section 1(m) of the Tribe's Constitution permits the Tribal Council to "impose fines to enforce its decisions which may be executed by attachment."

Given that the Tribal Council has the power to impose fines to enforce its decisions, the question becomes whether the amount of the sanctions in this case was arbitrary and capricious. The Tribal Council has asserted, without citation to any legal authority, the legal conclusion that it has the authority to levy fines at least up to the amount of the missing property. Order Imposing Sanctions ¶ 7. The Tribal Council has used this legal conclusion to justify fines of $1,000 a day on Mr. Johnson (and $1,000 for attorney's fees and cost) by asserting, without any apparent factual basis in the record, that the value of the property retained by Mr. Johnson exceeds $788,000. Petition at ¶ 16. Since the amount of the fines in this case is not rationally based on any legal or factual authority discernable by this Court on the record we have been presented, we conclude the amount of the fines is arbitrary and capricious.

We also note that if this Court were to uphold the huge financial sanctions imposed on Mr. Johnson, such a decision would be plainly inconsistent with the explicit responsibilities the Tribal Council has placed on this Court. And actions taken by the Tribal Council that contradict the Tribe's laws must be considered arbitrary. Section 5-2103 of the Code states:

> Except where limited by the laws of the Tribe, it shall be the objective of the Tribal Court and the duty of all Judges and Justices of the Tribal Court in resolving all matters before the Tribal Court to discover and determine the truth and, to the extent possible, to seek a resolution which restores

> balance to the community in accordance with the customs and traditions of the Tribe, repairs relationships, results in fairness, and avoids principles of retribution and punishment.

We do not decide today that the Tribal Council does not have the power to sanction contempt with monetary fines. Clearly, the Article X, Section 1(m) of the Tribe's Constitution provides the Tribal Council with that power.

But, based on the record before us, we do conclude that the fines levied in this case are so excessive that they fail to restore balance to the community, they fail to result in fairness, and they fail to avoid principles of retribution and punishment. This Court takes seriously it responsibility to act as unbiased source of legal rulings, and the Tribe has mandated that we act as a vehicle for restoring balance, relationships, and harmony to the community. We cannot do so but upholding the fines in this case.

III. Conclusion

It is not the place of this Court to tell the Tribal Council how to best enforce its orders and conclusions. Instead, it is our job, under the Code, to review Tribal Council actions to determine whether an examinee, which is deprived of his or her property or liberty, was provided due process or law. It is also our job to ensure that Tribal Council actions are not arbitrary, but are instead rationally based in reason, law, or fact.

We remand this case for reconsideration. In doing so, we have attempted in this opinion to provide guidance concerning what process we believe is due to Mr. Johnson. The original hearing in this matter did not provide due process and a new hearing is in order. The presumption and burden shifting stated in Section 1-3211(a) cannot be applied to Mr. Johnson, or other former officials, consistent with the requirements of due process. In addition, the Tribal Council must give Mr. Johnson notice of the specific pieces of property it believes he possesses and has failed to return, and the value of those items, so that he may have a fair opportunity to answer the charges against him at any hearing for reconsideration. If after a hearing for reconsideration the Tribal Council chooses to again deprive Mr. Johnson of his property, it must give Mr. Johnson notice of the specific and concrete pieces of property he must return in order to be freed of his contempt citation.

The huge fines levied in this case were not adequately based on any legal or factual premise that is discernable to the Court from the record provided. The fines were also excessive to the point of arbitrary because they conflicted with the Code provisions requiring this Court "to discover and determine the truth and, to the extent possible, to seek a resolution which restores balance to the community in accordance with the customs and traditions of the Tribe, repairs relationships, results in fairness, and avoids principles of retribution and punishment." Sac & Fox Tr. of Miss. Code § 5-203.

The Court is not in the position to say what level fines would be appropriate in this case, or whether fines are appropriate at all. It may be that once the due process problems discussed in this opinion are corrected, the Tribal Council may conclude the Hearing Examiners have failed to meet their burden, and that a contempt citation and fines are not

warranted. But if the Tribal Council concludes that such sanctions are warranted upon reconsideration, it should consider that the fines set after the first hearing were excessive to the point of arbitrary.

For the Court Unanimously,

Date: 2/3/06

Henry M. Buffalo Jr.
Chief Justice

c: V Fahnlander
J. Rasmussen
2-3-06 TEM

APPELLATE COURT OF THE
SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA

In Re:
Calvin Johnson,

Appellant,

v.

Sac & Fox Tribe of the Mississippi in Iowa Hearing Examiner,

Respondent.

Case No.: Johnson-App-CV-2005-01-022

Tribal Council Case No.: 2005-06

MEMORANDUM AND ORDER

On February 3, 2006, this Court issued its decision in the above entitled case. The Court ruled that the matter must be sent back to the Tribal Council for reconsideration because Mr. Johnson's due process rights had been violated and because aspects of the Tribal Council's decision were arbitrary and capricious.

The Tribal Council has now requested that this Court reconsider its decision. Mr. Johnson has filed a response arguing that the Court should not reconsider its decision.

There are four initial issues presented by the Tribal Council's motion. First, Mr. Johnson argues we lack the power to reconsider our decision under the ordinances governing the Court. The Tribal Council counters that this Court possesses the inherent authority to reconsider its decisions. While Mr. Johnson's argument is not without some force, we agree with the Tribal Council. We believe that permitting incorrect decisions to stand in perpetuity cannot have been the intention of the Tribal Council when it established this Court, particularly since it is the Tribal Council that now urges us to reconsider our decision. Indeed, it is the Tribal Council that created this Court to "discover and determine the truth", "to seek a resolution which restores balance to the community", and to act in a way that "repairs relationships, results in fairness, and avoids principles of retribution and punishment." Sac & Fox Tr. of Miss. Code § 5-2103. Concluding that this Court lacked the ability to reconsider incorrect decisions would not be consistent with this charge.

Second, Mr. Johnson has asked us to supplement the record for this case on appeal. We decline to do so. It would not be fair to the Tribal Council to review its decisions based on material it did not have before it when it made its original decision. The record, therefore, stands as we received it, and as each party certified on appeal.

Order Overruling Tribe's Motion to Reconsider

Third, Mr. Johnson argues that the Tribal Council's motion for reconsideration was improperly brought in the name of the Hearing Examiner, and not in the name of the Tribal Council. Based on Section 1-3205 of the Code, which states the Hearing Examiner(s) shall represent the Tribal Council in matters such as this, we fail to see a problem with how the Tribal Council styled its motion.

Lastly, we note the Tribal Council characterizes many aspects of the Court's decision as being issued sua sponte, or on the Court's own motion. As detailed in the text below, these characterizations are simply not correct as a factual matter. Mr. Johnson repeatedly raised concerns about the notice he received, the presumptions employed against him, the partiality of the hearing examiners, and the legal basis and amount of the fines imposed upon him. Instead of addressing this issues sua sponte, the record presented to this Court formed the basis of the Court's decision.

But even if this Court had considered some aspects of this case on its own motion, the Court notes that this practice is hardly unusual or prohibited -- many other tribal and American courts retain the inherent authority to regularly consider issues sua sponte. See.e.g, Pearce ex rel. General Council v. Nuckolls, 6 Okla. Trib. 181 (Absentee Shawnee 1999); Kerchee v. Kerchee, 2 Okla. Trib. 132 (Comanche CIA 1990); Celotex Corp. v. Catrett, 477 U.S. 317 (1986) (noting district courts have inherent power to grant summary judgment sua sponte). A court must be able to consider issues sua sponte to insure just outcomes are the result. Otherwise, the result in cases might turn on the quality of a party's legal counsel, and not on what would be just or right. Without the ability to consider issues sua sponte, if a lawyer did not phrase a legal argument in precisely the right way, a party may be deprived of its rights based on a technical, legal reading of the pleadings. Again, based on the language of Section 5-2103 that is not what we understand to be the purpose of this Court.

The Tribal Council has created this Court to assist in resolving disputes within this community. The Tribal Council has given this Court the power to review Tribal Council decisions to ensure that the Tribal Council's actions provide due process and are rationally based in the law of this Community. That is precisely what the Court has done in this case, nothing more or nothing less.

Notice

Throughout this proceeding, Mr. Johnson has objected repeatedly to the notice he had received and his inability to understand what specific tribal property the Tribal Council was seeking from him. See Johnson's Written Closing Argument (September 26, 2005) Appellate Exhibit 5 at p. 2-3 (complaining repeatedly that questions at hearing had no relationship to stated purpose of hearing in notices or allegations that Mr. Johnson held $788,000 in tribal property); Johnson's Written Reply to Closing Arguments and Recommendations (October 6, 2005) at 1-2 (complaining that questions at hearing bore no relationship to purpose of hearing stated in notices); Johnson's Written Reply to Closing Arguments and Recommendations (October 6, 2005) at 4-5 (complaining that

neither written notices nor hearing made it clear what documents Mr. Johnson must produce); Examinee Calvin Johnson Jr.'s Request for Review (November 17, 2005) at 4 (complaining that Tribal Council did not specify what tribal property was missing).

The notices provided to Mr. Johnson by the Tribal Council include numerous open ended requests. This Court concluded that:

> Based on these notices, there was no way Mr. Johnson could have understood what specific property the Tribal Council was looking for, how that property could be worth $788,000, whether or not the Tribal Council was actually alleging that he stole $788,000 in tribal funds, or whether the $788,000 was in fact missing.

The Tribal Council argues that we should reconsider this conclusion because these notices were sufficient for Mr. Johnson to prepare his defense that he did not possess the tribal property the Tribal Council was seeking.[1] In an effort to argue that the notices were sufficient, the Tribal Council relies on an insurance case from 1955 from the federal court sitting in the Southern District of New York. See Connecticut Mut. Life Ins. v. Sheilds, 17 F.R.D. 273 (S.D.N.Y. 1955). The decision cited by the Tribal Council does not detail how the documents in that case were described in the subpeona, making any comparison to this case problematic. But the case cited by the Tribal Council notes that subpoenas in federal court must be consistent with Federal Rule 34, which actually illustrates the very concern this Court had in its original ruling.[2]

Rule 34 of the Federal Rule of Civil Procedure is a discovery device that allows each party in a civil lawsuit to request that the other side produce documents and tangible things that may be relevant to the trial between the parties. Rule 34 requires that any party requesting documents or tangible things must describe those things with "reasonable particularity". Although federal cases have differed over the years on how to define "reasonable particularity", a helpful definition is that "reasonable particularity" means that

> the designation be sufficient to apprise a person of ordinary intelligence what documents are required and that the court be able to ascertain whether the requested documents have been produced.

8A Fed. Prac. & Proc. Civ.2d § 2211.

In this case, the requests by the Tribal Council in their original notices are not stated with "reasonable particularity" because neither Mr. Johnson nor this Court can understand

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[1] To be clear, we understood Mr. Johnson to be pursuing more than one claim on appeal to this Court. He claims the notice was insufficient in this case, and he also claims that he did not possess any of the property that the Tribal Council did, in fact, specify. We do not view these claims as mutually exclusive.

[2] Indeed, Federal Rule 45, which governs subpoenas, was amended in 1991 to more directly incorporate the standards of Rule 34.

what is expected of him. For example, the original subpoena sent to Mr. Johnson commanded that he produce:

> All tangible property (including documents), the creation, copying, or storage of which was paid for, in whole or part, by Tribal funds, and other property (including documents) which you have sent, received, possessed, or controlled as a claimed officer of the Tribe.

Subpeona Dudes Tecum, (May 10, 2005) Appellate Exhibit 4 at ¶ 1. The subpoena then goes on to demand a myriad of personal financial, phone, and computer records for nearly a three year period. Id. at ¶¶ 2-4

This subpoena was immediately preceded by a hearing notice and petition that allege Mr. Johnson withheld from the Tribe property whose value exceeds $788,000 in value. Petition (May 9, 2005) Appellate Exhibit 3 at ¶ 16. The Petition also threatens contempt sanctions and alleges that Mr. Johnson held tribal property that included, but was not limited to;

> drafted and executed contracts; records [Mr. Johnson's] expenses or requests for reimbursement; letters, e-mails, and/or other correspondence addressed to the Tribe, Tribal programs, Tribal Council members, or Tribal agents; proposed and/or adopted actual or purported resolutions; and minutes or other records of Council or committee meetings.

Petition (May 9, 2005) Appellate Exhibit 3 at ¶¶ 11.

These requests are all so broad, far-ranging and vague that Mr. Johnson did not have reasonable notice of the documents the Tribal Council was looking for, or the subject matter of the hearing he was commanded to attend. Indeed, this Court has reviewed the record in this case extremely closely, and we are at a loss to understand what specific documents or property would have satisfied the Tribal Council and allowed Mr. Johnson to avoid a charge of contempt. Since the notices sent to Mr. Johnson did not cite with reasonably particularity the $788,000 worth of property the Tribal Council claimed Mr. Johnson possessed, the notices were insufficient to provide Mr. Johnson with due process.

The Tribal Council also argues that oral notice given at the first hearing, when coupled with a continuance, was sufficient notice. However, the transcript of the first hearing does not show where Mr. Johnson received notice of the materials the Tribal Council was seeking with "reasonable particularity". To be fair, the questions asked at the first hearing did better apprise Mr. Johnson of the enormously broad scope of the Tribal Council's inquiry, and did identify some specific documents that the Tribal Council was seeking that it failed to specify in its written notices. But a careful review of the transcript of the first hearing still does not reveal the entire sum of the particular documents the Tribal Council was seeking, or what specific property Mr. Johnson must produce to satisfy the Tribal Council.

We are unpersuaded to reconsider our original conclusion that the notice given Mr. Johnson was insufficient.

Presumptions

In presenting his appeal to this Court, Mr. Johnson very clearly objected to the fact that the Tribal Council relied on Section 1-3211(a) to presume he had documents that he claims he did not have. See Examinee Calvin Johnson Sr.'s Request for Review (November 17, 2005) at 5, 6, & 7 (complaining that Tribal Council's presumption based on Section 1-3211 that he possessed documents deprived him of due process). Therefore, the Tribal Council's consideration of the presumptions utilized by the Tribal Council was not done sua sponte.

The Tribal Council relied on Section 1-3211(a) which created a rebuttable presumption that Mr. Johnson "has possession and control of all property which a person in Examinee's claimed office should have possessed or controlled." This Court concluded that this presumption was not rational when applied to officials who had left office such as Mr. Johnson, and that it therefore violated due process.

The Tribal Council objects to this conclusion. The Tribal Council states that we failed to use the standard used in federal courts for ruling a statute unconstitutional "on its face", or in other words, unconstitutional in its entirety.

This aspect of this case may be resolved by noting that the Tribal Council apparently misunderstands our original ruling. In our original decision, we did not strike down Section 1-3211(a) "on its face". In other words, we did not say that Section 1-3211(a) was unconstitutional in all circumstances. Instead, we specified at least twice that Section 1-3211(a) was unconstitutional only as it was applied to Mr. Johnson, and others in his precise factual situation. See In re: Johnson v. Tribal Council, Case No.: Johnson-App-CV-2005-01-022 (Feb. 3, 2006), at 5-6.

As we discussed in our original opinion, the reason the section in question could not be applied to Mr. Johnson was that as a former official, it was not rational to presume he continued to control all the property he controlled as an official. So we did, in fact, state that the section in question could not be applied to him, and by extension, to other former officials. But we did not comment one way or another on whether the presumption would hold true for current government officials. Therefore, we have not struck the section down on its face, but rather have only held it is inapplicable to Mr. Johnson, and by extension to others in his same factual situation.

We therefore do not reconsider our original decision related to Section 1-3211(a), and the presumptions utilized against Mr. Johnson.

Impartial decision maker

Mr. Johnson complained in his Request for Review before this Court that he was denied due process because both the Tribal Council and its attorneys had inherent conflicts that made them biased. See Examinee Calvin Johnson Sr.'s Request for Review (Novermber 17, 2005) at 7. The Court, therefore, did not consider the issue of impartiality sua sponte.

In our original opinion, we concluded that political rivalry was not sufficient to exclude Tribal Council members as decision makers, but that the attorneys for the Tribal Council, Messrs. Olson and Rasmussen, lacked the appearance of impartiality since they served as both prosecutors and advisors to the Tribal Council.

The Tribal Council has objected to this conclusion, arguing that Messrs. Olson and Rasmussen acted only as prosecutors, and that any appearance of bias was insufficient to disqualify them as prosecutors.

To be fair, this is a close question. But particularly given the significance of this case for the community, it is important that either side avoid even the appearance of impropriety.

The problem stems from the two hats worn by Messrs. Olson and Rasmussen. On the one hand, they have a general counsel type relationship with the Tribal government, in which they act as attorneys for the Tribe. On the other hand, the Tribal Council claims they are completely independent prosecutors for the purpose of this case. In our opinion they cannot be both.

The transcripts of the hearings before the Tribal Council demonstrate the problem. In both hearings, Mr. Johnson was represented by legal counsel, as is allowed under the Tribal Council's rules. In both hearings, Mr. Johnson's counsel made numerous legal objections. See, e.g., Transcript, June 21, 2005 at 42, 48, 66; Transcript, June 27, 2005 at 137. In both hearings, Messrs. Olson and Rasmussen either responded to these objections with legal arguments, or simply continued their questioning, or both. Id. In not one instance, that we were able to find, did the Tribal Council rule on the objections of Mr. Johnson's counsel.

The transcript, therefore, gives the definite impression that it was Messrs. Olson and Rasmussen who determined what testimony and evidence made it into the record, and that it was they, and not the Tribal Council, who was in charge of the hearings and was the arbiters of any objections. Since these kinds of decisions are ones made by the judge, and not the prosecutor, we understand Mr. Johnson's confusion.

The problem is that the Tribal Council did not have any independent legal counsel to help it respond to the objections by Mr. Johnson's lawyer, or to decide other legal questions raised by the hearing. It appears from the transcript that in this case the Tribal Council asked Messrs. Olson and Rasmussen to act as both prosecutors and legal counsel to the Tribal Council. An analogy in federal court would be if a judge asked a U.S. Attorney to also serve as a law clerk in a case he or she was prosecuting.

In our opinion, it would be appropriate for Messrs. Olson and Rasmussen to act as hearing examiners or legal counsel to the Tribal Council, but not both. We do not reconsider our decision that their multiple roles in this case created an appearance of bias.

Excessive fines

In his appeal to this Court, Mr. Johnson objected to the amount of the fines imposed upon him. See Examinee Calvin Johnson Sr.'s Request for Review (November 17, 2005) at 10-11 (Subsection D is entitled "The amount of the sanctions was Arbitrary and Capricious."). The Court, therefore, did not consider this issue sua sponte.

The Court agreed with Mr. Johnson that the amount of his fines were excessive by explaining:

> Since the amount of the fines in this case is not rationally based on any legal or factual authority discernable by this Court on the record we have been presented, we conclude the amount of the fines is arbitrary and capricious.

The Tribal Council objects to this conclusion.[3] The Tribal Council's primary argument is that we should not have considered this question after Johnson had purged himself of contempt. But such an argument ignores the very problem that concerns this Court. Based on this record, we were unable to discern any legal or factual authority for the Tribal Council's claimed ability to impose sanctions up to the amount of $788,000. Allowing the Tribal Council to impose sanctions with no basis in law or fact would be arbitrary and capricious. Section 1-3213 of the Code gives this Court jurisdiction to review Tribal Council decisions, such as the decision to impose fines in this case. To argue that we should refrain from exercising this duty until the Tribal Council has completed the enforcement of its order is not consistent with our statutory responsibilities.

If we were only to consider this argument after Mr. Johnson had paid the fines and purged himself of his contempt, we would in essence be upholding the Tribal Council's decision to impose the fine. Since we conclude that the Tribal Council's decision to

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[3] Part of this objection is apparently based on our use of the term "fine" rather than "coercive sanctions". Memorandum in Support of Motion to Reconsider (Feb. 22, 2006) at 12-13. As stated in our original opinion, we agree with the Tribe that that Article X, Section 1(m) of the Tribe's Constitution permits the Tribal Council to "impose fines to enforce its decisions which may be executed by attachment." Since the Tribal Council's power to impose sanctions in this case has been upheld based on constitutional language using the word "fine", we are genuinely at a loss to understand why the Tribal Council would now want to argue they are not imposing a fine, but some other type of sanction that lacks textual support in the Tribe's Constitution. Nonetheless, the distinction is not meaningful for our analysis in this case. Whether termed "fines" or "coercive sanction" the Tribal Council's decision to impose the enormous fines in this case lacks a basis in law for the reasons stated in our original opinion.

impose up to $788,000 in fines in this case was unsupportable, we decline the Tribal Council's invitation to reconsider this aspect of our decision.

ORDER

It is hereby Ordered that the Request for Reconsideration is **DENIED.**

For the Court Unanimously,

Date: 4/15/06

Henry M. Buffalo, Jr.
Chief Justice

c: A Fahnlander
JRasmussen
4-20-06TEM

SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIBAL COURT

KEY DECISIONS OF THE TRIAL COURT

Presented to the Meskwaki Tribal Court Interim Study Committee
September 29, 2006

TEM

FILED

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIAL COURT
349 Meskwaki Road
Tama, Iowa 52339-9629

SEP 29 2005 3:35pm

TRIBAL COURT
SAC & FOX TRIBE OF THE
MISSISSIPPI IN IOWA

In re the Marriage of Gaylord Walker and Shelley Walker

GAYLORD WALKER, Petitioner,	:	Case No. **Walker-CV-Dissolution-2005-02-010**
and concerning	:	**DECREE OF DISSOLUTION**
SHELLEY WALKER, Respondent.	:	

This matter came before the Court for final hearing on the Petition for Divorce filed by the Petitioner, Gaylord Walker. The Petitioner personally appeared with counsel, Nancy L. Burk. The Respondent personally appeared *pro se*. The parties to this action are Petitioner, Gaylord Walker, born September 2, 1956, who resides at 3286 G Avenue, Tama, Tama County, Iowa and Respondent, Shelley Walker, born April 12, 1959, who resides at 1542 6th Avenue, Des Moines, Polk County, Iowa, 50317. Petitioner is an enrolled member of the Sac and Fox of the Mississippi Tribe and a resident of the Meskwaki Settlement since 2001. The Respondent, Shelley Walker, is not an enrolled member of the Sac and Fox of the Mississippi Tribe (Meskwaki) but lived with Petitioner on the Meskwaki Settlement from 2001 until the parties separated in July 2005.

The parties resided together for twenty-seven years and were married for the past fourteen years. There are no minor children whose welfare will be affected by this dissolution of marriage.

FINDING OF FACTS

The Court finds it has jurisdiction of this matter and these parties.

After hearing testimony of the parties the Court finds there has been a breakdown in the marriage relationship such that the bonds of matrimony can not be sustained and the parties should

Order Granting Property Settlement to non-Indian

be divorced. The Court further finds that the parties should each be awarded his or her equitable share of the marital estate.

The Court finds the following assets and liabilities are included in the marital estate, valued and awarded as follows:

Bank Accounts. Petitioner's savings account with Wells Fargo Bank has a balance of $1,266.57. Petitioner shall pay Respondent $633.28 immediately as her share of this account.

Automobiles. The Petitioner is awarded the 1983 Chevrolet Silverado, the 1987 Chevrolet Blazer and the 1994 Buick LeSabre. The Respondent is awarded the 1992 Dodge Van and the 1990 Buick Regal. Petitioner shall pay Respondent $2000.00 as a property value settlement for the 1994 Buick LeSabre. Respondent shall sign over Titles to the Petitioner on the 1983 Chevrolet Silverado and the 1987 Chevrolet Blazer.

Household Goods. The Petitioner is awarded the furniture in his possession and all miscellaneous household goods with the exception of Respondent's personal belongings property which shall be returned to her. Respondent is awarded a property value settlement of $1,100.00 for the entertainment unit and master bedroom suite.

Appliances. The Petitioner is awarded the household appliances in his possession. The parties agree the value of these appliances is $700.00. Petitioner shall pay Respondent $350.00 for her interest in this property.

Life Insurance. The Principal Life insurance policy on Gaylord's life is awarded to Petitioner. The policy has no accumulated cash value to be divided.

Debts. The joint Federal Income tax past due liability for tax years 1999, 2000 and 2001 has a current account balance of $6,902.34. This obligation shall be shared equally by the parties with each responsible for the payment of one-half of the outstanding account plus one-half of future

accumulated interest and penalties after the entry of this Decree. Each party shall hold the other harmless for his or her share of the obligation.

The Court finds Petitioner should pay Respondent a total property settlement of $4,083.28, as itemized above, for which judgment shall enter. Petitioner shall pay $633.28 immediately. The balance shall be paid in monthly payments of $400.00 and in any event in full in six months of the date of this Decree.

IT IS THEREFORE ORDERED that the marriage between Gaylord Walker and Shelly Walker is dissolved and each is restored to the status of a single and unmarried person.

IT IS FURTHER ORDERED that the marital property shall be divided and awarded as stated above. Petitioner shall pay Respondent the property settlement of $4,083.28 according to the terms and conditions above and judgment shall enter for this amount. Respondent shall execute a satisfaction and release upon receipt of all monies due.

IT IS FURTHER ORDERED the parties shall each be awarded property in his or her possession or titled in his or her name which was acquired after the parties separated and not included in the marital estate. Each shall also be responsible for his or her debts incurred since the parties separated or for any debts not identified in the marital estate. The parties shall hold each other harmless for their respective share of the Internal Revenue debt.

IT IS FURTHER ORDERED each party shall be responsible for their own attorney fees.

SO ORDERED this 27th day of September, 2005.

Elbridge Coochise, Chief Judge
Sac & Fox Tribe of the Mississippi in Iowa
Trial Court

C: M. Burk
S. Walker
9-30-05
TEM

TEM

FILED

FEB 07 2006 12:12pm

TRIBAL COURT
SAC & FOX TRIBE OF THE
MISSISSIPPI IN IOWA

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIAL COURT
349 Meskwaki Road
Tama, Iowa 52339-9629

In Re the Recognition of a Foreign Judgment Upon the Petition of Tamera K. Rizzio, Petitioner, And Concerning David A. Peters, Respondent.	Case No. Peters-CV-Foreign Judgment-2005-02-019 ORDER

The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 7th day of February, 2006, at 10:00 a.m., in the Tribal Chambers of the Sac and Fox Tribe of the Mississippi in Iowa. Petitioner, Tamera Rizzio, appeared in person. Respondent, David Peters, also appeared personally.

The hearing was initiated by Petitioner Rizzio and was for the purpose of requiring Respondent Peters to show cause why he should not be held in contempt of court because of his failure to abide by the terms of the Court's order dated November 1, 2005, which required him to pay an accumulated arrearage of child support.

Respondent Peters was informed that the total outstanding child support arrearage with respect to his child, Joshua Ray Van Beek, born April 29, 1981, is $5,196.48. Such amount was accumulated during the period commencing April 3, 1996, the date paternity was established, through June, 1999, when Joshua graduated from high school.

Respondent Peters agreed to pay child support in the amount of $318.00 per month, each month, until such time as the arrearage ($5,196.48) is paid in full.

Order Awarding Support from Per-Capita Payment to non-Indian

Respondent Peters agreed to execute a consent, which would authorize the Tribal Fiscal Department to withhold from his monthly per capita payment the amount of $318.00 per month, such amount to be forwarded to Petitioner Rizzio. Respondent Peters explained that he was in the process of obtaining a loan so as to pay in full the present child support arrearage. The Court supports the efforts of Respondent Peters in this respect. Based on the foregoing, the Court makes the following:

ORDER

1. Respondent Peters shall provide written authorization to the Tribal Fiscal Department to withhold from his per capita payments monthly amounts of $318.00.

2. In the event Respondent Peters fails to provide written authorization by February 17, 2006, to the Tribal Fiscal Department to withhold from his per capita payments monthly amounts of $318.00, he shall pay a civil penalty in this same amount ($318.00) each month.

3. The monthly payments, either authorized by Respondent Peters, or in the form of a civil penalty, shall be made payable to: "Tamera Rizzio," and provided to the Clerk of Tribal Court. The Clerk shall, in turn, provide the monthly payments to Petitioner Rizzio.

4. In the event Respondent Peters is able to obtain a loan so as to pay off the present child support arrearage, he shall have a check prepared in the amount of the outstanding balance made payable to "Tamera Rizzio," and delivered to the Clerk of Court. The Clerk shall, in turn, provide the payment to Petitioner Rizzio.

5. No interest shall accrue on the unpaid balance of the child support arrearage.

IT IS SO ORDERED.

By the Court,

DATED: 2/7/06

Joseph Plumer

Joseph Plumer
Associate Judge, Sac & Fox Tribe of the Mississippi in Iowa Tribal Court

c: T. Rizzio
D. Peters
2-7-06 TEM
Fiscal Dept.
2-22-06 TEM

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIAL COURT
349 Meskwaki Road
Tama, Iowa 52339-9629

In Re the Recognition of a Foreign Judgment Upon the Petition of Terre Ann Taylor, Petitioner, vs. Wesley Alan Bear, Respondent.	Case No. Taylor-CV-Foreign Judgment-2006-04-030 **ORDER**

FINDINGS AND CONCLUSIONS

1. The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 13th day of June, 2006, at 9:00 a.m., in the Conference Room of the Tribal Center of the Sac and Fox Tribe of the Mississippi in Iowa.
2. Petitioner appeared personally, along with her son, Kellen.
3. Respondent did not appear, and is in default.
4. This matter is a foreign judgment case, where Petitioner requests that the Court give recognition to the judgment of the District Court of Goodhue County, Minnesota, pertaining to an award of legal custody, as well as an award of child support.
5. This Court has jurisdiction over this matter pursuant to Sac and Fox Tribe of the Mississippi in Iowa Tribal Code, Title 5, Article V, Chapter I, Section 5-5103, and Title 6, Chapter IV, Section 6-1408.

Order Recognizing Minnesota State Court Order for Support

6. Respondent had notice of these proceedings, initially, through personal service of the underlying Summons and Complaint in the Goodhue County, Minnesota District Court; and in this Court through published notice in the *Toledo Chronicle* pursuant to the requirements of the Tribal Code of the Sac and Fox Tribe of the Mississippi in Iowa.

7. Respondent responded to the Clerk of Court upon seeing the published notice, and requested a copy of the Petition herein. The Clerk of the Tribal Court promptly provided Respondent with a copy of the Petition herein.

8. Petitioner requested that the Court grant full faith and credit to the Goodhue County, Minnesota, order providing for the sole legal and sole physical custody of the child herein, Kellen Jason Bear, born May 17, 2001.

9. Petitioner requested that the Court grant full faith and credit to the Goodhue County, Minnesota, order pertaining to an award of child support in the amount of $446.71 per month.

10. Petitioner requested that the Court grant full faith and credit to the Goodhue County, Minnesota, order pertaining to the award of child support arrearages.

11. Petitioner requested that the Court grant full faith and credit to the Goodhue County, Minnesota, order pertaining to the change of the child's name to: "Kellen Jason Bear Taylor".

12. The child herein, Kellen Jason Bear, is an enrolled member of the Prairie

Island Mdewakanton Dakota Tribe; and he is not an enrolled member of the Sac and Fox Tribe of the Mississippi in Iowa.

13. Respondent executed a Minnesota Voluntary Recognition of Parentage, which evidences his paternity of the child herein.

Based on the foregoing, the Court makes the following:

ORDER

1. Petitioner is awarded the sole legal and sole physical custody of the minor child of the parties, Kellen Jason Bear.

2. Respondent shall arrange visitation with the minor child by contacting Petitioner to make such visitation arrangements.

3. This Court hereby grants full faith and credit to the judgment of the Goodhue County, Minnesota District Court pertaining to the custody, child support and name change with respect to the minor child herein.

4. Respondent shall pay child support to Petitioner each month in the amount of $536.05. Such amount comprises an ongoing monthly child support obligation of $446.71, together with a payment toward unpaid child support arrearages in the amount of $89.34 per month.

5. Respondent's ongoing child support obligation began on October 14, 2005, the date of the judgment of the Goodhue County, Minnesota District Court. Arrearage accumulation shall go back 24 months from the date of the Goodhue County, Minnesota, order to November 1, 2003. The total arrearage payable by Respondent shall include an accumulation of unpaid ongoing child support through the present.

6. Petitioner informed the Court that Respondent has not paid any amounts for the support of the minor child since the date of the Order of the Goodhue County, Minnesota District Court. Accordingly, Respondent's total child support arrearage through June, 2006, is $14,294.72.

7. Respondent shall provide written authorization for the Tribal Fiscal Department to withhold from his per capita payments monthly amounts of $536.05.

8. In the event Respondent fails to provide written authorization by June 30, 2006, to the Tribal Fiscal Department to withhold from his per capita payments monthly amounts of $536.05, he shall pay a civil penalty in this same amount ($536.05) each month.

9. The monthly payments, either authorized by Respondent, or in the form of a civil penalty, shall be made payable to: "Terre Ann Taylor," and provided to the Clerk of Tribal Court. The Clerk shall, in turn, provide the monthly payments to Petitioner.

10. No interest shall accrue on the unpaid balance of the child support arrearage.

IT IS SO ORDERED.

By the Court,

Dated: 6/13/06

Joseph Plumer

Joseph Plumer
Associate Judge, Sac and Fox Tribe of the Mississippi in Iowa Tribal Court

c: T. Taylor
W Bear
6-13-06 TEM

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA TRIAL COURT
349 Meskwaki Road
Tama, Iowa 52339-9629

In Re the Recognition of a Foreign Judgment Upon the Petition of JERRY ALLEN MERILL, Petitioner, vs. DEANNA MAY MERRILL, NKA DEANNA MAY KEAHNA, Respondent.	Case No. Merrill-CV-Foreign Judgment-2005-03-028 **ORDER**

THIS MATTER came on this 11th day of July, 2006, for a hearing on a Request for Enforcement of Foreign Judgment filed on December 21, 2005, by Jerry Allen Merrill, petitioner.

FINDINGS AND CONCLUSIONS

1. The above-entitled matter came on for hearing before the undersigned Judge of Tribal Court on the 11th day of July, 2006, at 9:00 a.m., in the Conference Room of the Tribal Center of the Sac and Fox Tribe of the Mississippi in Iowa.
2. Petitioner appeared personally, along with his son, Jerred Jonah Merrill, co-petitioner.
3. Respondent did not appear, and is in default.
4. This matter is a foreign judgment case, where Petitioner requests that the Court give recognition to the Judgment of the District Court of Wapello

Order Recognizing Iowa Court Order for Support + Awarding to non-Indian

County, Iowa, pertaining to an award of legal custody, as well as an award of child support.

5. This Court has jurisdiction over this matter pursuant to Sac and Fox Tribe of the Mississippi in Iowa Tribal Code, Title 5, Article V, Chapter I, Section 5-5103, and Title 6, Chapter IV, Section 6-1408.

6. Respondent had notice of these proceedings through published notice in the *Oskaloosa Herald,* of Mahaska County pursuant to the requirements of the Tribal Code of the Sac and Fox Tribe of the Mississippi in Iowa.

7. Respondent did not respond to the Clerk of Court on the published notice.

8. Petitioner requested that the Court grant full faith and credit to the Order of Wapello County, Iowa, providing for the sole legal and sole physical custody of the children herein, Jerred Jonah Merrill, DOB: 09-16-1984 and Aaron Jacob Merrill, DOB: 07-08-1990.

9. Petitioner requested that the Court grant full faith and credit to the Order of Wapello County, Iowa, pertaining to an award of child support in the amount of $743.55 per month.

10. Petitioner requested that the Court grant full faith and credit to the Order of Wapello County, Iowa, pertaining to the award of child support arrearages.

Based on the foregoing, the Court makes the following:

ORDER

1. Petitioner is awarded the sole legal and sole physical custody of the minor children of the parties, Jerred Jonah Merrill and Aaron Jacob Merrill.

2. This Court hereby grants full faith and credit to the Judgment of the Wapello County, Iowa District Court pertaining to the custody and child support.

3. Respondent shall pay child support to Petitioner each month in the amount of $1,244.00. Such amount comprises an ongoing monthly child support obligation of $743.55, together with a payment toward unpaid child support arrearages in the amount of $500.45 per month.

4. Respondent's ongoing child support obligation began on March 1, 1996, pursuant to the Judgment of Wapello County, Iowa District Court, dated February 26, 1996. The total arrearage payable by Respondent shall include an accumulation of unpaid ongoing child support through the present.

5. Petitioner informed the Court that Respondent has paid only $1,490.77 for the support of the minor children since the date of the Order of the Wapello County, Iowa District Court. Accordingly, Respondent's total child support arrearage through July 6, 2006, is $91,452.98.

6. Respondent shall provide written authorization for the Tribal Fiscal Department to withhold from her per capita payments monthly amounts of $1,244.00.

7. In the event Respondent fails to provide written authorization by July 28, 2006, to the Tribal Fiscal Department to withhold from her per capita payments monthly amounts of $1,244.00, she shall pay a civil penalty in this same amount ($1,244.00) each month.

8. The monthly payments, either authorized by Respondent, or in the form of a civil penalty, shall be made payable to: "Jerry Allen Merrill," and provided to the Clerk of the Tribal Court. The Clerk shall, in turn, provide the monthly payments to Petitioner.

9. No interest shall accrue on the unpaid balance of the child support arrearage.

IT IS SO ORDERED.

Dated: July 12, 2006

Elbridge Coochise, Chief Judge
Sac and Fox Tribe of the Mississippi in Iowa
Tribal Court

C: J. Merrill 7-18-06 TEM
Fiscal Dept 7-28-06

IN THE IOWA DISTRICT COURT IN AND FOR WAPELLO COUNTY

In Re the Marriage of
JERRY ALLEN MERRILL and DEANNA MAY MERRILL

UPON THE PETITION OF
JERRY ALLEN MERRILL, 481-74-5326

Petitioner,

Equity No. CD5468-0994

AND CONCERNING
DEANNA MAY MERRILL, 478-82-7522
n/k/a DEANNA MAY KEAHNA,
Respondent.

95 FEB 26 AM 11:20
CLERK OF DISTRICT COURT

ORDER RE: MODIFICATION OF DECREE OF DISSOLUTION OF MARRIAGE

BE IT REMEMBERED that on this 26th day of FEB., 1996, the above-entitled matter came before the Court pursuant to the Petitioner's Application for Modification of Decree of Dissolution of Marriage filed on the 13th day of December, 1995.

The Petitioner, Jerry Allen Merrill, appeared in person with his attorney, Patrick F. Curran of Vinyard & Curran; and the Respondent, Deanna May Merrill, now known as Deanna May Keahna did not appear personally at said hearing. That Petitioner's Application was filed on December 13, 1995 and that on the 21st day of December, 1995, the Respondent, Deanna May Merrill, now known as Deanna May Keahna was personally served with a copy of said Application for Modification, with appropriate Original Notice. That Return of Service is on file showing said service by Legal Deliveries Process Service filed January 5, 1996.

That the Respondent, Deanna May Merrill, now known as Deanna May Keahna has not appeared personally in this matter, nor has any attorney filed an Appearance or Answer on her behalf and that the time for appearing has now passed.

THE COURT, having heard the evidence introduced by the Petitioner and having reviewed the file and being fully advised in the premises, makes the following:

VINYARD
&
CURRAN
ORNEYS AT LAW
P.O. BOX 936
9 CHURCH ST.
TTUMWA, IOWA
52501

FINDINGS OF FACT

THE COURT finds that the Petitioner and Respondent were awarded a Decree of Dissolution of Marriage on May 1, 1995, and said Decree states as follows:

> "**IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED** that the minor children, Deanna Jean Merrill, born January 18, 1981, Jerred Jonah Merrill, born September 16, 1984, and Aaron Jacob Merrill, born July 8, 1990, are presently involved in a CHINA proceeding, Juvenile No. JV000024, and therefore, the District Court does not have jurisdiction at this time to enter any order regarding child custody, child support, visitation or health insurance."

THE COURT further finds that on December 5, 1995, the juvenile proceeding came on before the Court for Review Hearing and that on December 8, 1995, a Findings and Order was filed in the Juvenile proceeding and states as follows:

> "IT IS FURTHER ORDERED that father be authorized to litigate custody of children Aaron and Jerred Merrill in District Court dissolution proceedings."

THE COURT further finds that as a result of the above and foregoing, that it has jurisdiction of the parties and of the subject matter herein.

CONCLUSIONS OF LAW

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Decree of Dissolution of Marriage entered in the above–entitled matter on the 1st day of May, 1995 shall be and hereby is **MODIFIED WITH THE FOLLOWING ADDITIONS:**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Petitioner, Jerry Allen Merrill, is awarded legal and physical custody of two of the minor children, namely: Aaron Jacob Merrill, born July 8, 1990, and Jerred Jonah Merrill, born September 16, 1984, with Respondent to have supervised visitation only pursuant to the Findings and Order in the ongoing CHINA proceeding.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that Respondent, Deanna May Merrill, n/k/a Deanna May Keahna, shall pay child support of $743.55 per month , with the first payment being due on the 1st day of March, 1996, and a like amount on the same day each month thereafter.

VINYARD
&
CURRAN
IRNEYS AT LAW
.O. BOX 936
I CHURCH ST.
TUMWA, IOWA
52501

That said child support shall be paid to the office of the Wapello County Clerk of Court, Wapello County Courthouse, Ottumwa, Iowa 52501 or Collection Services, P.O. Box 9125, Des Moines, Iowa 50306, and shall be continued until the minor children of the parties until each attain the age eighteen (18) years of age, dies, marries or becomes self–supporting, is emancipated or adopted, whichever first occurs, except that if said minor children is between the age of eighteen (18) and twenty–two (22) years of age and is regularly attending an approved school in pursuance of a course of study leading to a high school diploma or its equivalent or regularly attending a course of vocational technical training, either as a part of a regular school program or under special arrangements adapted to the individual person's needs, or is in good faith a full time student in a college, university or area school and the next regular term has not yet begun, then said child support shall continue until said minor child attains the age of twenty–two (22) years.

If support payments ORDERED under Section 598.21 or 675.25 are not paid to the Wapello County Clerk of Court pursuant to Section 598.22 and become delinquent in an amount equal to the payment of one (1) month, the Clerk of the Child Support Recovery Unit established under Section 252B.2 may order the defaulting person to assign to the Clerk a portion of the person's periodic earnings, trust income or other income sufficient to pay the support obligation.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that an Order for Mandatory Wage Assignment shall issue wherein the Respondent's employer, Silverhawk Security Company, Address: Lincoln Trade Center, 6121 S. 58th Bldg C, Lincoln, Nebraska 68516 shall deduct from the Respondent's income or amounts due to her the sum of $743.55 per month pursuant to Decree, as payment of current child support obligation. All payments shall commence ten (10) days after service of a certified copy of the Order upon the employer. Said Order shall direct funds deducted to be paid to the Wapello County Iowa Clerk of Court, Wapello County Courthouse, Ottumwa, Iowa 52501; or Collection Services, PO Box 9125, Des Moines, Iowa 50306.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that health insurance coverage for the minor children, Aaron Jacob Merrill and Jerred Jonah Merrill shall be provided by the Petitioner, Jerry Allen Merrill. Any amounts due on medical or dental expenses for the minor children, Aaron Jacob Merrill and/or Jerred Jonah Merrill after insurance payments shall be paid by the parties equally on a fifty–fifty basis.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that all other terms and conditions as set out in the original Decree shall remain as originally

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52501

set out and not be modified in any manner.

IT IS FURTHER HEREBY ORDERED, ADJUDGED AND DECREED that court costs associated with this Modification shall be paid by the Petitioner, Jerry Allen Merrill.

JUDGE, WAPELLO COUNTY IOWA DISTRICT COURT

2-28-96
P Curran
Resp
CSR-Foster Care

VINYARD
&
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UMWA, IOWA
52501

IN THE SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA
TRIBAL COURT
349 Meskwaki Road
Tama, Iowa 52339-9629

In Re the Custody of the Minor Child:

Carver James Brown, DOB 2-09-06

Order

SEGER TYRONE BROWN,
Petitioner,

and

KRISTINE LINN THILL,
Respondent.

Case No.: Thill-CV-Custody
2006-05-021

The above-entitled Petition for Custody came before the Court for Temporary Hearing on September 20, 2006. Honorable Kimberly M. Vele presided. The petitioner appeared in person *pro se*; the respondent did not appear; and Attorney Felicia Bertín Rocha appeared Guardian ad Litem for the minor child.

The following individuals also appeared: Milton Conrad Brown, the child's paternal grandfather and Joni Mauskemo, the child's paternal grandmother.

Having reviewed the file herein, the Court finds and orders as follows:

FACTS

This matter was first heard on July 26, 2006 at which time the Court entered a Temporary Order for supervised visits with the petitioner and minor child. Said Temporary Order provided a September 19, 2006 hearing date to consider any modifications to the Temporary Order if either party moved the Court for a hearing to resolve any disputes regarding the temporary visitation. On September 18, 2006, the petitioner filed a written request for a hearing to modify the Temporary Order. The Clerk

Order Denying Request of Tribal Member Due to Untimely Filing

of Court scheduled the matter for hearing on September 20, 2006 and on September 18, 2006 mailed to the parties a notice of the hearing.

LAW

Notice requirements for motion practice are governed by the Tribe's family code. Specifically, section 6-1603(c) prohibits the Court from hearing a motion unless the moving party files the motion with the Clerk of Court at least fourteen days prior to the hearing. SAC & FOX TR. OF MISS. CODE §6-1603(c). Because petitioner's motion was filed less than forty eight (48) hours from the time set aside by the Court for a hearing, the motion is untimely and may not be heard.

Accordingly, the Court orders as follows:

1. Petitioner's motion for temporary relief is denied.

2. This matter is scheduled for a full day custody hearing at 9:00 o'clock a.m. on October 18, 2006. The Court will consider the issues of custody, visitation and child support.

3. All previous orders remain in full force and effect.

4. Disobedience of the Court's orders is punishable under the Section 6-1609 of the Family Relations Code until such order is complied with and the costs and the expenses of the contempt proceedings are paid or until the offending party is otherwise discharged according to Tribal law.

5. This Order is issued without prejudice to either party at the final hearing.

Dated this 20th day of September, 2006.

Kimberly M Vele

Honorable Kimberly M. Vele
Meskwaki Tribal Court Judge

C: S Brown
K Thill
F Bertin Rocha
9-20-06 TEM

IN THE TRIAL COURT OF THE
SAC & FOX TRIBE OF THE MISSISSIPPI IN IOWA
MESKWAKI SETTLEMENT

In Re the Matter of:	) Case No. Keahna-CV-Review-2005-01-011
Darcy Jo Keahna, DOB 2/10/85 Decedent,	
Upon the Petition of	**ORDER**
Danette Whitebreast and Janet Whitebreast, Petitioners.	

FILED
TEH
SEP 21 2006
TRIBAL COURT
SAC & FOX TRIBE OF THE
MISSISSIPPI IN IOWA

The above-entitled matter came on for hearing before the undersigned Judge of the Tribal Court of the Sac and Fox Tribe of the Mississippi in Iowa in the Conference Room at the Tribal Center on August 8, 2006, at 10:00 a.m. Petitioners were present and were represented by Ms. Nancy Burk, Attorney at Law. Appearing for the Tribe was Mr. Jeffrey Rasmussen, Attorney at Law. The Petitioners had previously filed a Motion for Summary Judgment; and the Tribe filed a combined brief in support of its Motion for Summary Judgment, together with a response to the Petitioners' Motion for Summary Judgment.

By prior Order dated November 10, 2005, the Court denied the Tribe's Motion to Dismiss this case because Petitioners sought only declaratory relief, and a request for such relief is properly before the Court pursuant to Sec. 5-6201 of the Tribal Code of the Sac and Fox Tribe of the Mississippi in Iowa.

If there was any doubt about the nature of the relief being sought by the Petitioners, such doubt was clarified at the hearing by counsel for Petitioners: Petitioners do not seek monetary relief; they seek clarification of the Revenue Allocation Ordinance

Order with Recommendations to Tribal Council

as to which accomplishments will entitle a tribal member to treatment as a high school graduate; and they do not seek retroactive application of any such interpretation to the specific circumstances of Darcy Jo Keahna's early completion of her high school course of study. These clarifications satisfy the requirements of Sec. 5-6201, and permit this Court to consider the issues raised by Petitioners.

Petitioners argue that completion of the coursework entitling a tribal member student to a high school diploma should be sufficient to attain the status of a High School Graduate for purposes of the application of the Revenue Allocation Ordinance, and the receipt of the actual piece of paper (diploma) should not be controlling. The specific circumstances of Darcy Joe Keahna illustrate the concern: Darcy completed her high school course of study entitling her to a diploma on January 17, 2003. Darcy turned age 18 on February 10, 2003. Marshalltown High School does not have an early graduation ceremony, and her actual diploma was not printed early. Prior to the issuance of her high school diploma, Darcy died on March 28, 2003. Despite the fact that she completed the course of study which entitled her to a high school diploma, together with the fact that she attained the age of 18 prior to her death, Darcy's estate was nonetheless denied the 75 percent of her per capita distribution that was held by the Tribe in an investment account. At the hearing, counsel for the Tribe said that the reason for this is clear: the Revenue Allocation Ordinance requires that a high school graduate (who has attained age 18) must provide verification to the Tribal Office of receipt of a high school diploma, and Darcy's diploma was not available until June, 2003 (after her death). According to the Tribe's argument, completion of all coursework entitling Darcy to a high school diploma was not controlling.

Petitioners argue, and the Court agrees, that the requirement in the Revenue Allocation Ordinance that a tribal member actually possess a high school diploma is under inclusive of those tribal members (who have attained age 18) who should be entitled to the release of the 75 percent of their per capita distribution that was held in an investment account by the Tribe. Petitioners assert that it is conceivable in the future that the estates of other tribal members may be denied the portion of their per capita distributions retained by the Tribe if they pass on before they actually receive their diploma, even though all coursework has been completed entitling the individual to a diploma.

While the Court is permitted to consider the issues raised by Petitioners, the relief available to the Court is greatly limited by the statute. (See, Sec. 5-6201 (b)). As a practical matter, the Court is limited to making a request to the Tribal Council to consider the underinclusiveness of the Revenue Allocation Ordinance as applied to the circumstances raised by the Petitioners; and request that the Tribal Council expand the permissible interpretations of the Ordinance for future applications.

Petitioners explained that it is not uncommon for students to complete their high school course of study mid-year of their senior year; but that it is not feasible for rural school districts to print diplomas and hold graduation ceremonies early for such students. The result for tribal member students in such circumstances (who have reached 18) is that they must postpone the receipt of that portion of their per capita payments retained by the Tribe in an investment account until their diploma is available. While a literal reading of the Tribe's Revenue Allocation Ordinance requires a tribal member student to wait for his or her diploma to become available in order to access that portion of the per capita

payment managed by the Tribe, such a literal interpretation elevates form over substance. Clearly, it is the completion of the course of study that should control, and not the receipt of the piece of paper (diploma).

The Court hereby requests that the Tribal Council consider for future applications an interpretation of the Revenue Allocation Ordinance that permits a tribal member student who has attained age 18, and who has completed his or her high school course of study early, to be permitted to access that portion of the student's per capita payment managed by the Tribe upon presentation of sufficient evidence by the school that the tribal member student has completed the high school course of study, where the actual diploma is not yet available.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: 9/16/06

Joseph Plumer
Associate Judge

c: N Burk
J Rasmussen
9.22.06 TEM

MESKWAKI TRIBAL COURT
DOCKET CALENDAR – Case Type

Rev. 9-28-06

CASE NO.		FILED	STATUS	JUDGE
1.	CV-Custody-2005-01-001	5-25-05	**Case Dismissed** 6-2-05	Coochise
2.	CV-Child in Need Asst.-2005-01-002	5-27-05	**Case Dismissed** 7-5-05	Coochise
3.	CV-Custody-2005-01-003	6-6-05	**Dissolution Granted** 1-10-06	Vele
4.	CV-Child Support-2005-01-004	6-13-05	**Support Granted** 8-2-05; Contempt Finding 2-22-06	Vele
5.	CV-Custody-2005-02-005	6-13-05	Temp Visitation/ **Support Granted** 11-29-05 **Final Order 2-22-06**	Vele
6.	CV-ICWA-2005-01-006	6-23-05	**Custody Awarded** 8-16-05 Review Hearing 12-6-05 (held) **Adoption Granted** 1-24-06 (CV-Adoption-2005-01-024)	Coochise
7.	CV-Per Capita-2005-01-007	6-30-05	Motion to Dismiss Denied; Notice of Appeal filed 3-28-06	Coochise
8.	CV-Dissolution-2005-01-008	7-5-05	**Dissolution Granted** 1-10-06	Vele
9.	CV-Custody-2005-03-009	7-8-05	Motion to Dismiss Denied; Status Review 5-30-06; Motion to Dismiss 6-27-06; Pending ruling	Vele
10.	CV-Dissolution-2005-02-010	7-26-05	TRO Denied 8-9-05 **Dissolution Granted** 9-29-05	Coochise
11.	CV-Review-2005-01-011	7-29-05	Motion to Dismiss Motion Denied 11-1-05	Plumer

			Summary Judgment 8-8-06; Pending Ruling
12.	CV-Paternity-2005-01-012	8-10-05	**Dismissed w/Prejudice** 4-11-06 Vele
13.	CV-Damages-2005-01-013	8-18-05	Motion Hearing Coochise 11-15-05 continued – death in community Motion Hearing 1-10-06 Vele Discovery Motions 4-11-06 Evidentiary Hearing/Motion to Dismiss 6-29-06; Pending ruling
14.	CV-Custody-2005-04-014	8-19-05	**Default Custody Granted** 9-29-05 Coochise
15.	CV-Custody-2005-05-015	8-19-05	Initial Hearing 12-6-05 Coochise Full Hearing 1-24-06 3 pm **Modification Granted 3-10-06;** Review 9-5-06
16.	CV-Foreign Judgment-2005-01-016	9-8-05	**Granted Full Faith** Plumer 11-1-05; **Contempt Finding 12-20-05**
17.	CV-CINA-2005-02-017	9-9-05	Initial Hearing 9-27-05 Coochise Dispositional Order 1-10-06 Vele **Dismissed** 4-11-06 Vele
18.	CV-Dissolution-2005-03-018	9-9-05	Sch Conf 2-21-06 Vele **Dissolution Granted** 4-11-06
19.	CV-Foreign Judgment-2005-02-019	9-26-05	**Granted Full Faith** Plumer 11-1-05; **Contempt Finding** 2-7-06
20.	CV-Per Capita-2005-02-020	10-21-05	**Appeal Dismissed** Appellate Ct. 1-18-06
21.	CV-CINA-2005-03-021	11-2-05	Initial Hearing Coochise On Hold, in ND court
22.	App-CV-2005-01-022	11-21-05	Motion to Stay Tribal Council Action -Temp Stay Granted; **Remanded to Tribal Council**

2-3-06

23.	CV-Dissolution-2005-04-023	12-12-05	**Dissolution Granted** Coochise 1-24-06
24.	CV-Adoption-2005-01-024	12-12-05	**Adoption Granted** Coochise 1-24-06
25.	CV-Dissolution-2005-05-025	12-13-05	Order for Publication Plumer 1-27-06; **Default Dissolution Granted 4-4-06**
26.	CV-CINA-2005-04-026	12-16-05	Initial Hearing Plumer 12-20-05; Emergency Removal Order 12-16-05; Dispositional Review/Permanency 10-3-06
27.	CV-CINA-2005-05-027	12-20-05	Initial Hearing Plumer 12-23-05; Emergency Removal Order 12-20-05; Adjudication of CINA Petition 2-7-06; Dispositional Review/Permanency 6-13-06; **Permanent Legal and Physical Custody Granted 6-13-06**
28.	CV-Foreign Judgment-2005-03-028	12-21-05	Order for Publication Coochise 1-27-06; Initial Hearing 7-11-06; **Granted Full Faith 7-11-06**
29.	CV-Dissolution-2006-06-029	1-11-06	Order for Publication Plumer 1-27-06; Initial Hearing 4-4-06 **Default Dissolution Granted 4-4-06**
30.	CV-Foreign Judgment-2006-04-030	2-3-06	Awaiting Service Plumer Order for Publication 3-14-06 Initial Hearing 6-13-06; **Granted Full Faith & Credit 6-13-06**
31.	CV-Dissolution-2006-07-031	2-9-06	Initial Hearing Coochise 3-7-06; Final Hearing 4-18-06; **Divorce Granted 5-16-06; Contempt Finding 9-5-06**
32.	CV-Custody-2006-06-032	3-6-06	Initial Hearing Coochise

			4-18-06; Cont'd 10-4-06 (Plumer)
33.	CV-Custody-2006-07-033	3-10-06	Initial Hearing Vele 5-2-06; Status Review 6-27-06; **Dismissed 6-27-06**
34.	CV-ICWA-2006-01-005	3-10-06	Initial Hearing Coochise 5-16-06; Permanency 7-11-06; Cont'd 11-7-06
35.	CV-Adoption-2006-01-006	3-13-06	Final Hearing Coochise 9-5-06; **Adoption Granted 9-5-06**
36.	CV-CINA-2006-01-007	3-16-06	Initial Hearing Plumer 4-4-06; Review 6-13-06; Begin reunification process; Emergency Protect Order 9-14-06; Placement hearing 9-19-06; Disp Review 10-31-06
37.	CV-Support-2006-01-008	3-14-06	**Support Awarded** Coochise 5-16-06; **Contempt Finding 8-22-06**
38.	CV-Custody-2006-03-009	3-22-06	Initial Hearing 5-2-06 Vele Status Review 6-27-06; Trial 9-19-06; **Decision & Order 9-19-06**
39.	App-CV-2006-01-010	3-28-06	Notice of Appeal Appellate 3-28-06
40.	CV-App-2006-02-011	3-28-06	**Order of Validation** Appellate 4-4-06
41.	CV-Custody-2006-04-012	4-6-06	Initial Hearing 5-31-06 Vele **Visitation Granted 5-31-06;** Petition to Modify filed 7-26-06; Awaiting Service
42.	CV-ICWA-2006-02-013	4-12-06	Initial Hearing Coochise 4-18-06; stayed pending family Problem-solving techniques
43.	CV-ICWA-2006-03-015	4-17-06	Initial Hearing Coochise

			5-16-06; Change of Guardianship, Minor to Shelter Care; Review 8-22-06; Case Plan Review 9-7-06
44.	CV-Dissolution-2006-03-016	4-24-06	Motion to Dismiss Vele 6-27-06; **Dismissed 6-27-06**
45.	CV-ICWA-2006-04-017	4-28-06	Initial Hearing Coochise 5-16-06; Cont'd 10-4-06 (Plumer)
46.	CV-ICWA-2006-05-018	4-28-06	Initial Hearing Coochise 5-16-06; Cont'd 10-4-06 (Plumer)
47.	CV-ICWA-2006-06-019	4-28-06	Initial Hearing Coochise 5-16-06; Cont'd 10-4-06 (Plumer)
48.	CV-ICWA-2006-07-020	4-28-06	Initial Hearing Coochise 5-16-06; Cont'd 10-4-06 (Plumer)
49.	CV-Custody-2006-05-021	6-1-06	Initial Hearing Vele 7-25-06; Temp visitation granted; Review temp visit 9-20-06; Final Hearing 10-18-06
50.	CV-Adoption-2006-02-022	5-15-06	Awaiting Investigation Report From MFS
51.	CV-Foreign Judgment-2006-02-023	6-2-06	Initial Hearing Plumer 10-3-06
52.	CV-Damages-2006-01-024	6-15-06	Initial Hearing Vele 9-20-06
53.	CV-SC-2006-01-025	6-30-06	**Judgment Entered 8-8-06** Plumer
54.	CV-Adoption-2006-03-026	7-5-06	Awaiting Investigation Report from MFS
55.	CV-TPR-2006-01-027	7-12-06	Initial Hearing Vele 7-25-06; awaiting IR from MFS on adoption file
56.	CV-TPR-2006-02-028	7-12-06	Initial Hearing Vele 7-25-06; awaiting IR from

			MFS on adoption file
57.	CV-TPR-2006-03-029	7-12-06	Initial Hearing Vele 7-25-06; awaiting IR from MFS on adoption file
58.	CV-TPR-2006-04-030	7-12-06	Initial Hearing Vele 7-25-06; Final Adoption Hearing 9-5-06
59.	CV-TPR-2006-05-031	7-12-06	Initial Hearing Vele 7-25-06; Review 9-19-06; Disp Review/Dismissal 1/9/07
60.	CV-CINA-2006-02-032	7-6-06	Initial Hearing Vele 7-25-06; Final Dispositional Hearing 9-19-06; **Dispositional Order 9-19-06;** Dispositional Review/Dismissal 1-9-07
61.	CV-SC-2006-02-033	7-14-06	Dismissed by Plaintiff
62.	CV-Custody-2006-06-034	7-24-06	Initial Hearing Plumer 10-3-06
63.	CV-Dissolution-2006-04-035	8-1-06	Temp Hearing Coochise 8-8-06; Cont'd to 9-7-06
64.	CV-Damages-2006-02-036	8-8-06	Temp Restraining Order Coochise 8-8-06; Preliminary Injunction Granted 9-5-06
65.	CV-Custody-2006-07-037	8-8-06	Awaiting Service
66.	CV-Custody-2006-08-038	8-10-06	Initial Hearing Vele 10-17-06
67.	CV-Custody-2006-09-039	8-14-06	Initial Hearing Plumer 10-3-06
68.	CV-Name Change-2006-01-040	8-18-06	Initial Hearing Plumer 10-3-06
69.	CV-CINA-2006-03-041	8-21-06	Emergency Removal Coochise Order 8-21-06; 72-hr hearing 8-23-06; fact-finding hearing on

			CINA petition 10-31-06
70.	CV-Adoption-2006-04-042	8-24-06	Awaiting IR from MFS
71.	CV-Dissolution-2006-05-043	8-28-06	Awaiting service
72.	CV-Dissolution-2006-06-044	8-25-06	Awaiting service
73.	CV-Adoption-2006-05-045	8-30-06	Awaiting IR from MFS
74.	CV-Foreign Judgment-2006-03-046	9-21-06	Awaiting service
75.	CV-Foreign Judgment-2006-04-047	9-22-06	Awaiting service
76.	CV-Damages-2006-03-048	9-27-06	Awaiting service
77.	App-CV-2006-03-049	9-27-06	Awaiting brief